

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

OMAR CASTANEDA-DIAZ,

Defendant-Appellant.

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UNPUBLISHED

June 10, 2014

No. 314959

Ingham Circuit Court

LC No. 12-000376-FH

Before: FITZGERALD, P.J., and SAAD and WHITBECK, JJ.

PER CURIAM.

Defendant appeals his jury conviction of bribery of a public officer, MCL 750.117, and conspiracy to commit bribery of a public officer, MCL 750.157a. For the reasons stated below, we affirm.

**I. FACTS AND PROCEDURAL HISTORY**

Defendant could not renew his driver's license because he does not have a valid Social Security number.<sup>1</sup> Francisco Flores, the boyfriend of defendant's niece, agreed to help defendant with the renewal. He contacted Nancy Luna, a clerk at a Secretary of State office, and asked her to renew defendant's drivers license, despite the fact that defendant did not have a valid Social Security number. Luna, who knew that renewal of defendant's license would violate the law, informed her superiors of her conversation with Flores, and her superiors told the Michigan State Police. Luna agreed to work with the police in their investigation of the matter, and they recorded her telephone calls with Flores. She and Flores negotiated a payment of \$1,200 for Luna's assistance in circumventing Michigan law.

On November 3, 2010, defendant and Flores went to the branch office where Luna worked. Luna testified that defendant handed her paperwork and an envelope containing \$1,200. Defendant stated that he did not know that the envelope contained \$1,200, and that Flores did not ask him for the money. Luna processed defendant's renewal, and defendant and Flores left together.

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<sup>1</sup> See MCL 257.307.

Defendant was subsequently charged with bribery of a public officer under MCL 750.117, and conspiracy to commit bribery of a public officer pursuant to MCL 750.157a. A jury found defendant guilty of both crimes. On appeal, defendant claims that: (1) the prosecution presented insufficient evidence to sustain his convictions; and (2) the trial court improperly instructed the jury on a lesser included offense. We address each issue in turn.

## II. ANALYSIS

### A. SUFFICIENCY OF EVIDENCE<sup>2</sup>

In a criminal case, due process requires that the prosecution introduce evidence sufficient to justify a trier of fact in concluding that the defendant is guilty beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). In reviewing the sufficiency of the evidence, we will not interfere with the role of the trier of fact in determining “the weight of the evidence or the credibility of witnesses.” *People v Eisen*, 296 Mich App 326, 331; 820 NW2d 229 (2012). Furthermore, “[i]t is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences.” *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). “Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.” *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

Here, the jury convicted defendant of two offenses: (1) bribery of a public officer, under MCL 750.117; and (2) conspiracy to commit bribery of a public officer, under MCL 750.157a. MCL 750.117 reads, in full:

Any person who shall corruptly give, offer or promise to any public officer, agent, servant or employee, after the election or appointment of such public officer, agent, servant or employee and either before or after such public officer, agent, servant or employee shall have been qualified or shall take his seat, any gift, gratuity, money, property or other valuable thing, the intent or purpose of which is to influence the act, vote, opinion, decision or judgment of such public officer, agent, servant or employee, or his action on any matter, question, cause or proceeding, which may be pending or may by law be brought before him in his public capacity, or the purpose and intent of which is to influence any act or omission relating to any public duty of such officer, agent, servant or employee, shall be guilty of a felony.

The prosecution presented sufficient evidence for the jury to find defendant guilty of bribery of a public officer. Defendant testified that he had tried to renew his driver’s license in

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<sup>2</sup> Our Court reviews sufficiency of the evidence claims de novo in a light most favorable to the prosecution, to determine “whether a rational trier of fact could have found that the essential elements of the crime were proved beyond reasonable doubt.” *People v Ericksen*, 288 Mich App 192, 196; 793 NW2d 120 (2010).

Paw Paw, but “[the Secretary of State officials] told him that they cannot do this.” Luna stated that Flores asked her to help defendant renew his license, despite his lack of a Social Security number. Defendant admitted at trial that he did not have a Social Security number in 2010. Flores persuaded Luna to accept \$1,200 rather than \$1,500, saying that defendant was “kinda broke.” This implied that defendant would be paying the bribe rather than Flores, which indicates knowledge and intent. Luna testified that defendant walked into her branch office with Flores, and both men came to her counter together. Luna testified that defendant handed her an envelope containing \$1,200 that he had pulled out of his vest or coat. When asked what she understood this transaction to mean, Luna responded, “I was going to process his driver’s license for him and he bribed [me to overlook] the Social Security, that he wasn’t eligible.” Viewing this evidence in the light most favorable to the prosecution, defendant gave Luna, a public employee, a bribe with the intent that she would improperly renew his license. The prosecution therefore presented sufficient evidence for a jury to convict defendant of violating MCL 750.117.

The jury also convicted defendant with violation of MCL 750.157a, which provides, in pertinent part: “Any person who conspires together with 1 or more persons to commit an offense prohibited by law, or to commit a legal act in an illegal manner is guilty of the crime of conspiracy . . . .” “The elements of the crime of conspiracy consist of (1) an agreement (2) to do something unlawful or to do something lawful in an unlawful way.” *People v Ayoub*, 150 Mich App 150, 153; 387 NW2d 848 (1985).

The prosecution presented sufficient evidence for the jury to find defendant guilty of conspiracy to commit bribery of a public official. In the first two recorded phone conversations, Flores outlined defendant’s situation and asked Luna to renew defendant’s driver’s license. Flores later negotiated the amount of the bribe and said that he would tell defendant about it. In another conversation, Luna indicated that she would like the money in an envelope. Luna also testified that she gave Flores paperwork for defendant to fill out before he came to see her. Defendant and Flores then came together to the branch office where Luna worked, and defendant handed her paperwork and an envelope containing \$1,200. She testified that she then processed defendant’s license renewal, and defendant and Flores then left together. Viewing this evidence in the light most favorable to the prosecution, defendant and Flores conspired to bribe a Luna, a public officer. The prosecution therefore presented sufficient evidence for a jury to convict defendant of violating MCL 750.157a.

Accordingly, defendant was properly convicted of violating both MCL 750.117 and MCL 750.157a, and his insufficiency of the evidence claim is without merit.

## B. JURY INSTRUCTIONS

Defendant asserts that the trial court improperly instructed the jury on a lesser included offense of bribery of a public official. The trial court, at defendant’s request, agreed to give a jury instruction on what it believed was a lesser included offense, stating as follows:

Okay, and I indicated in chambers that I would give the lesser that the Defense requested for Bribery of an Agent or a Servant because I saw it as a necessarily included lesser offense since it’s missing one of the elements of the main offense being a public official, and although the Prosecutor pointed out that

it is private bribery, the statute does not indicate that. It only indicates that it is of an agent, servant, or employee and so it fits, in my definition anyway, of a necessarily included lesser offense, so that's the reason I'm giving it.

During its deliberations, the jury sent out a note requesting clarification on the distinction between a public official and an agent, servant, or employee. The trial court instructed the jury as follows:

[F]or the charged offense the Prosecutor must prove that the Defendant offered a bribe to a public official, a public agent, a public servant, or a public employee after the election or appointment of that individual. The lesser offense applies to private agents, servants, or employees and not public individuals.

Defendant says that the trial court's instruction in response to the jury's question was erroneous, as it indicated that defendant could not be found guilty of the lesser included offense because Luna was a public employee. What defendant ignores is the fact that defendant's counsel explicitly stated on the record that he did not have any objection to the trial court's supplemental instruction—meaning that defendant waived his claim to challenge the instruction. See *People v Kowalski*, 489 Mich 488, 503; 803 NW2d 200 (2011) (“[w]hen defense counsel clearly expresses satisfaction with a trial court's decision, counsel's action will be deemed to constitute a waiver”). The trial court thus properly instructed the jury on the lesser included offense and defendant's claim is without merit.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Henry William Saad  
/s/ William C. Whitbeck